



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing

## **DECISION**

Dispute Codes      CNR, OLC, FFT

### Introduction

Under section 58 of the Residential Tenancy Act (the “Act”), this hearing dealt with the tenant’s April 6, 2023, application to the Residential Tenancy Branch for:

- (i) an order cancelling a 10 Day Notice to End Tenancy for Unpaid Rent (the “Notice”) pursuant to section 46(4)(b) of the Act;
- (ii) an order for the landlord to comply with the Act under section 62 of the Act; and
- (iii) authorisation to recover the cost of the filing fee under section 72 of the Act.

### Preliminary Issue – tenant already left the rental unit

The tenant affirmed that the tenant left the rental unit on April 23, 2023. The current application before me for an order to cancel the Notice is moot since the tenant has already left the unit.

Section 62(4)(b) of the Act states that an application should be dismissed if the application or part of an application for dispute resolution does not disclose a dispute that may be determined under the Act. I exercise my authority under section 62(4)(b) of the Act to dismiss the application to cancel the Notice.

### Issues

1. Is the landlord entitled to a monetary order for unpaid rent?
2. Is the tenant entitled to recover the cost of the filing fee?

### Background and Evidence

In reaching this decision, I have considered all relevant evidence that complied with the *Rules of Procedure*. Only the necessary oral and documentary evidence that helped resolve the issues of the dispute and explain the decision is included below.

The tenancy began September 1, 2019. Rent is \$2,500.00 due on the first day of the month. The landlord currently retains a \$1,250.00 security deposit. There is a copy of the written tenancy agreement in evidence.

The landlord served the Notice on April 4, 2023, by attaching a copy to the door of the rental unit. Page two of the Notice indicates that the tenant did not pay rent in the amount of \$2,500.00 that was due on April 1, 2023. All pages of the Notice were served and submitted into evidence.

The landlord affirmed that:

- the tenant is currently \$5,000.00 in rental arrears, representing unpaid rent from April and May 2023.
- the landlord never served a Two Month Notice to End Tenancy for Landlord's Use of Property on the tenant.

The tenant affirmed that:

- the tenant was informed by the previous landlord in January 2023 that the property has been sold and the new owners would be moving in on April 1, 2023.
- the landlord never served a Two Month Notice to End Tenancy for Landlord's Use of Property on the tenant.
- the tenant did not pay April 2023's rent as the tenant believed that the tenant was entitled to the last month's rent for free.
- the tenant did not pay May 2023's rent as the tenant had moved out of the rental unit on April 23, 2023.
- the tenant sent an email to the landlord on April 27, 2023, stating that the apartment will be cleaned and ready for return on April 30, 2023. The tenant did not receive a reply from the landlord.

### Analysis

Section 26 of the Act requires tenants to pay rent the day it is due unless they have a legal right to withhold rent.

Section 51 of the Act provides that a tenant, who receives a notice to end a tenancy under section 49 [*landlord's use of property*], is entitled to receive from the landlord an amount that is the equivalent to one month's rent payable under the tenancy agreement.

As both the landlord and tenant agree that the landlord never served a Two Month Notice to End Tenancy for Landlord's Use of Property on the tenant, I find that the tenant is not entitled to the equivalent of one month's rent payable under the tenancy agreement. Therefore, I find that the tenant did not have a valid reason to withhold April 2023's rent.

Section 45 of the Act provides that a tenant may end a periodic tenancy by giving the landlord notice to end the tenancy effective on a date that is not earlier than one month after the date the landlord receives the notice.

The tenant's evidence is that the tenant sent an email to the landlord on April 27, 2023, stating that the apartment will be cleaned and ready for return on April 30, 2023. As the landlord only received this email on April 27, 2023, the effective date of the tenant's notice to end tenancy would be May 27, 2023. Therefore, I find that the tenancy was still in effect in May 2023. Thus, I find that the tenant did not have a valid reason to withhold May 2023's rent.

The landlord's evidence establishes that the tenant is currently \$5,000.00 in rental arrears, representing unpaid rent from April and May 2023. As mentioned above, I find that the tenant did not have a valid reason to withhold April nor May 2023's rent. Taking into consideration all of the evidence before me, I find on a balance of probabilities that the tenant did not pay the rent as required under section 26(1) of the Act. Pursuant to section 67 of the Act, I have determined that the landlord suffered a monetary loss of \$5,000.00 due to the tenant's failure to pay rent, and order that the tenant pay this amount to the landlord.

Pursuant to sections 38 and 72 of the Act, the landlord is ordered to retain the \$1,250.00 security deposit as partial satisfaction of the payment order. A monetary

order for the remaining amount of \$3,750.00 is attached to this Decision and must be served on the tenant.

Since the tenant was not successful in its application, the tenant's application to recover the cost of the filing fee under section 72 of the Act is dismissed.

### Conclusion

The application is dismissed without leave to reapply. The landlord is awarded a monetary award in the amount of \$3,750.00.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: June 16, 2023

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Residential Tenancy Branch